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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/005,846

12/03/2001

Khuy V. Nguyen

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09/20/2007

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EXAMINER

CHANG, VICTOR S

ART UNIT

PAPER NUMBER

1771

MAIL DATE

DELIVERY MODE

09/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/005,846	<b>Applicant(s)</b> NGUYEN ET AL.	
	<b>Examiner</b> Victor S. Chang	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Introduction***

1. Appeal Board's decision mailed 9/11/2007 has affirmed in part the Examiner's Answer mailed 6/20/2007. Claims 1-8 are affirmed. Claims 9-11 are reversed. The Board states that the Appellants have provided evidence that "dry stretching" has a specific meaning in the art of microporous membrane manufacture, and Appellants use that phrase to differentiate from phase inversion or extraction methods of forming the pores within the sheet, therefore the Examiner's interpretation has improperly divorced the word "dry" from "stretching" and ignored the specific meaning those two terms, when used together, were meant to have as evidenced by the Specification and as understood by those in the membrane art as evidenced by Kesting. In response, the prior grounds of rejection over claims 9-11 in the Examiner's Answer are withdrawn. However, a new search is required, and new grounds of rejection are set forth below.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Rejections Based on Prior Art***

3. Claims 1-8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103 (a) as obvious, over Kondo [JP 10-017694 computer translation].

The rejection over claims 1-8 has been affirmed by Board's decision as set forth above.

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4. Claims 9-11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Zimmerman et al. [US 3679540], and evidenced by Kondo [JP 10-017694 computer translation] and applicants' admission.

Zimmerman's invention relates to an open celled microporous film [col. 1, ll. 11-51]. The process for preparing the open-celled microporous polymer films from non-porous, crystalline, elastic polymer starting films, includes (1) cold stretching, i.e., cold drawing, the elastic film until porous surface regions or areas which are elongated normal or perpendicular to the stretch direction are formed, (2) hot stretching, i.e., hot drawing, the cold stretched film until fibrils and pores or open cells which are elongated parallel to the stretch direction are formed, and thereafter (3) heating or heat setting the resulting porous film under tension, i.e., at substantially constant length, to impart stability to the film [col. 2, lines 40-50]. A significant group of polymers, i.e., synthetic resinous materials, to which this invention may be applied are the olefin polymers, e.g., polyethylene, polypropylene, etc., or with minor amounts of other olefins, e.g., copolymers of propylene and ethylene [col. 4, ll. 54-61].

For claims 9-11, since Zimmerman's microporous membrane is open celled, it reads on the term "diffusion membrane". Since Zimmerman teaches that a minor amounts of copolymers of propylene and ethylene can be included, a workable amount less than 10 weight percent is reasonably deemed to be either anticipated or obvious provided by practicing the invention of prior art, motivated by the desire to obtain the beneficial effects of including the small amount of ethylene-propylene copolymer, as recognized by the Board [see Decision, page 9] that while Kondo does not disclose the exact effect one of ordinary skill in the art would expect to obtain from adding EPR (copolymer of propylene and ethylene) to the polyethylene, it is evidenced from the context of the disclosure within the reference that the effect was known to those of

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ordinary skill in the art, and the Board also recognized that, in fact, Appellants' own Specification indicates that elastomers were known to improve the mechanical strength of polyethylene films (Specification 3:1-8). Finally, since Zimmerman's stretching process is solvent free, it reads on the term "dry stretched".

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S. Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Victor S Chang/  
Primary Examiner, Art Unit 1771

9/14/2007

/Kathryn Gorgos/  
Kathryn Gorgos  
TC 1700 Director Designee